

Worksession

Agenda Item #	10
Meeting Date	September 6, 2005
Prepared By	Jessie Carpenter City Clerk
Approved By	Barbara B. Matthews City Manager

Discussion Item	Proposed Advisory Referendum on Instant Runoff Voting - Discussion of Council
Background	<p>The City Council has expressed interest in exploring a change to the City Charter which would allow instant runoff voting in city elections. The following description of instant runoff voting is posted on the website of The Center for Voting and Democracy - FairVote (www.fairvote.org).</p> <p>“How Instant Runoff Voting Works: IRV allows voters to rank candidates in order of preference (i.e. first choice, second choice, third, fourth and so on). Voters have the option to rank as many or as few candidates as they wish, but can vote without fear that ranking less favored candidates will harm the chances of their most preferred candidates. First choices are then tabulated, and if a candidate receives a majority of first choices, he or she is elected. If nobody has a clear majority of votes on the first count, a series of runoffs are simulated, using each voter’s preferences indicated on the ballot. The candidate who received the fewest first place choices is eliminated. All ballots are then retabulated, with each ballot counting as one vote for each voter’s highest ranked candidate who has not been eliminated. Specifically, voters who chose the now-eliminated candidate will now have their ballots counted for their second choice candidate -- just as if they were voting in a traditional two-round runoff election -- but all other voters get to continue supporting their top candidate. The weakest candidates are successively eliminated and their voters’ ballots are redistributed to next choices until a candidate crosses a majority of votes.”</p> <p>Currently, the City Charter, Section 606 - Election of Mayor and Councilmembers, specifies:</p> <p><i>(b) The candidate receiving the largest number of votes for Mayor shall be declared elected. The candidate for Council receiving the largest number of votes in each ward shall be declared elected.</i></p> <p><i>(c) In the event of a tie vote resulting in the declaration of no elected candidate, a run-off election between the tied candidates shall be held.</i></p> <p>In July, the Council requested information about placing an advisory referendum on the ballot for the 2005 election concerning instant runoff voting, in order to assess the interest of Takoma Park voters in changing to an instant runoff voting system.</p> <p>It should be noted that even if the results of an advisory referendum favor instant runoff voting, then the City Charter would still need to be amended by the Council in order to provide for instant runoff voting in City Elections.</p>

	<p>The City Charter, Section 610 - Advisory Referendums, describes the process for placing an advisory referendum on the ballot – either by a resolution adopted by the majority of the City Council, or by petition of registered voters in the city. (See Section 610 below.)</p> <p>If Council intends to place an advisory referendum on the ballot for the November 8, 2005 election, that decision should be made no later than the week of the Nominating Caucus, in order to allow sufficient time to prepare the absentee ballots for mailing. The Council needs to determine what public input process, if any, should be conducted before a final decision is made.</p>
Policy	<p><i>Section 610 Advisory Referendums</i></p> <p><i>(a) A question for referendum or a legislative initiative, not otherwise provided for in this Charter and regarding a matter over which the Council has authority, may be placed on the ballot in any regular or special City election. All such referendum questions or initiatives, unless they are made binding on the Council by any other section of this Charter or by other applicable city, county, state or federal law, shall be advisory only and shall not bind or obligate the Council or the City to enact any ordinance or resolution or to perform any act or function.</i></p> <p><i>(b) Advisory referendum questions or legislative initiatives may be placed on the ballot in any City election in the following manner:</i></p> <p><i>(1) The Council may, by resolution passed by a majority of the Council, provide for an advisory referendum question or legislative initiative to be placed on the ballot at any regular municipal election or at a special election.</i></p> <p>The Charter goes on to describe the process to place an advisory referendum on the ballot by petition of registered voters in the city, and then continues in Section 610(b)(5):</p> <p><i>(5) Any resolution providing for the placement of an advisory referendum question or initiative on a ballot shall specify the exact wording which is to be submitted to the voters of the City.</i></p>
Fiscal Impact	Certain legal expenses will be incurred for drafting or review of the resolution and language of the ballot question.
Attachments	Legal Opinion - Advisory Referendum and Instant Runoff Voting
Recommendation	Staff recommends that the Council discuss the placement of an advisory referendum on the ballot and consider what, if any, public input process should be conducted prior to a final decision on this matter.
Special Consideration	The resolution providing for placement of an advisory referendum question on the ballot shall specify the exact wording which is to be submitted to the voters of the City.

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MEMORANDUM

To: Mayor and Council, City of Takoma Park

From: Kenneth Sigman, Linda Perlman, and Susan Silber, City Attorneys

Subject: Advisory Referendum

Date: August 3, 2005

Advisory Referendum

In light of an October 1999 Circuit Court for Montgomery County ruling preventing the City from placing two advisory referenda and one Charter amendment referendum regarding the gun ban on the City general election ballot, we have been asked to research the legality of placing an advisory referenda regarding instant ballot runoffs on the general election ballot this year. Although neither the Maryland appellate courts, the Maryland Code, nor the Maryland Constitution expressly address the authority of municipal corporations to hold advisory referenda, we see no prohibition on the City's authority. In addition to the fact that Judge Ferretti's oral opinion in the gun ban case does not have precedential effect, the subject matter of the current proposed advisory referendum and the 2001 revision of the Charter which added a section to expressly authorize advisory referenda indicate that the City may hold an advisory referendum regarding instant runoff voting.

In the gun ban case, the Circuit Court held that the advisory referenda constituted "straw votes," which are prohibited by Maryland law. Although the Court of Appeals of Maryland has held that straw votes—votes that would not have legal effect—are not permitted in Maryland, the legal and factual circumstances where the court has found referenda to constitute prohibited such straw votes are distinguishable from both the instant case and the gun ban case. The referenda at issue before the Court of Appeals involved City of Baltimore and Montgomery County general elections, which are state elections governed by Maryland election law. The Court of Appeals found that neither the state law nor the Montgomery County or Baltimore City charters authorized such matters to be included on state ballots. The City's general election, on the other hand, is a municipal election and is not governed by Maryland election law. At the time the Circuit Court

considered the gun ban referenda, the Charter did not address the issue of advisory referenda. The Charter now expressly authorizes advisory referenda. *See* Charter, Sec. 610.

Another distinguishing characteristic of the proposed instant runoff advisory referendum is that the referenda at issue before the Court of Appeals were illegal on their face. Both involved affirmative referenda that were intended to have binding effect. The court found them to be straw votes because, due to their illegality, they could have not take effect. One conflicted with the Maryland Code and was therefore preempted, and the second constituted an unconstitutional delegation of legislative authority to the electorate. The court noted that it would be misleading to voters if a referenda were approved and placed on the books but it had no effect unless and until there was a change in state law. In the case of the instant runoff advisory referendum, the City intends the proposed referendum to be advisory only and it will be presented to voters as such. In addition, the subject matter of the proposed referendum, the revision of the Charter's election provisions, is a permissible action and is, itself, the proper subject of an affirmative Charter amendment referendum.

Charter Provisions and Instant Runoff Voting

The Charter presently provides that the candidate receiving the largest number of votes is elected; there is not a majority requirement. A runoff election is held only in the event of a tie vote. *See* Charter, Sec. 606(b) & (c).

It appears that the proponents of instant runoff voting (IRV) also are proposing that the Charter be amended to require a majority vote for a candidate to be elected to the office of Mayor or Council. If so, then that change needs to be included in either a charter amendment or in an advisory referendum question on whether the voters favor amending the Charter to provide for instant runoff voting in City elections. Under IRV, voter would rank candidates in order of choice. If no candidate receives a majority of the first choice votes, then the candidate with the fewest votes is eliminated and the eliminated candidates votes are distributed to those voter's second choice candidate. The process of eliminating the last place candidate and recounting those ballots would continue until one candidate receives a majority of the vote.

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